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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,142	01/28/2002	Yoshiyuki Ohta	218477USOPCT	8165
22850	7590	07/29/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			ABBOTT, YVONNE RENEE	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/030,142

Applicant(s)

OHTA ET AL.

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-10,12-15,17-22 and 24-27 is/are rejected.
- 7) ☒ Claim(s) 5,11,16,23 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/12/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see page 7, filed 3/12/04, with respect to the application of the Uni et al. reference by Examiner Nelson have been fully considered and are persuasive. A new rejection follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6/1, 7, 12, 17/1, 18/1, 19 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujimata et al. (Bulletin of College of Agriculture and Veterinary Medicine) as disclosed on Applicant's IPER (PCT/JP00/05114) filed with the present application on 1/28/02. ***[It should be noted that a copy of this prior art was not found as being filed with the present application, although Applicant has knowledge of its existence based on IPER. Applicant is reminded of the duty to disclose information which is material to patentability. A copy of this reference should be filed with any response to this Office Action.]*** Fujimata et al. disclose a method of injecting fertile eggs within seven days after laying with a solution containing amino acids, followed by hatching.

4. Claims 1, 2, 7, 8, 12, 13, 17/1, 17/2, 18/1, 18/2, 19, 20, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Robel et al. (4,973,595) and (British Poultry Science, vol. 32, (1991); PTO-1449 reference). Robel et al. disclose a method for treating fertilized eggs comprising injecting a solution comprising amino acids into the eggs; wherein in a trial, the eggs were injected after 17 days of incubation (p. 510); and wherein the eggs were subsequently hatched.

5. Claims 1-3, 4/1, 4/2, 4/3, 6/1, 6/2, 6/3, 7-9, 10/7, 10/8, 10/9, 12-14, 15/12, 15/13, 15/14, 17/1, 17/2, 17/3, 18/1, 18/2, 18/3, 19-21, 22/19, 22/20, 22/21, 24-26, 27/24, 27/25, and 27/26 are rejected under 35 U.S.C. 102(b) as being anticipated by Al-Murrani (British Poultry Science, vol. 23 (1982)). Al-Murrani discloses a method of treating fertilized eggs by injecting them with amino acids; wherein the eggs were injected after 7, 8, 14, 21, 28, 35, 42, 49 and 56 days of incubation (pp. 171-172); wherein the solution comprising amino acids has a composition almost the same as the amino acid composition in the eggs before the start of incubation; and wherein the eggs were subsequently hatched.

Allowable Subject Matter

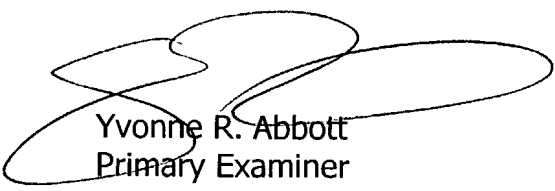
6. Claims 5, 11, 16, 23, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-

2866. The examiner can normally be reached Monday -Thursday 7:30-6:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on (703)306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644